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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/075,326	02/14/2002	Raphael Louis Mangin	CM2502	8690

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THE PROCTER & GAMBLE COMPANY
INTELLECTUAL PROPERTY DIVISION
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EXAMINER

FIDEI, DAVID

ART UNIT	PAPER NUMBER
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3728

DATE MAILED: 05/20/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/075,326

Applicant(s)

MANGIN, RAPHAEL LOUIS

Examiner

David T. Fidei

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,4,9,10,17-26 and 28 is/are pending in the application.
- 4a) Of the above claim(s) 17-27 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1,4,9,10 and 28 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

Claim Rejections - 35 USC § 112

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims 1, 4, 9, 10 and 28 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The present disclosure is not capable of supporting the as is now broadly claimed. Therefore the embodiments of a container having a trapezoidal shape, which is broad enough to encompass shapes not disclosed in the present specification as originally disclosed, constitutes new matter.

Dictionary.com defines trapezoidal as a quadrilateral having two parallel sides. A quadrilateral is defined in the same resource as, *Mathematics*; having four sides. Hence a trapezoidal shaped container within the language claimed could be a container where a front and back wall are parallel to one another with a bottom wall perpendicular to both the front and back wall. In order to meet the definition of a quadrilateral having two parallel sides, the top wall would then be non-parallel to the bottom. This type of shaped container is outside the scope of the description. By pointing out an amended claim is modified to include embodiments outside the scope of the disclosure, the PTO has satisfied its burden of establishing new matter, compare MPEP § 2163.05(III) *In re Wertheim*.

3. Claims 1, 4, 9, 10 and 28 rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for top wall, 1 that will be longer than the bottom wall, 2, resulting in a trapezoid shape container where the preferred embodiment the angle between the front side wall, 3 and the bottom side wall, 2 is between 95° and 160°, more preferably 95° and 130°, most preferably 95° and 115°, does not reasonably provide enablement for trapezoidal shaped container of any parameters. The specification does not enable any person skilled in the

art to which it pertains, or with which it is most nearly connected, to make or use the invention commensurate in scope with these claims. See paragraph 2 above where the claim includes embodiments outside the scope of the disclosure.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1, 4, 9 and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Omdoll et al (Patent no. 4,706,844). A trapezoidal container 10 is disclosed in figure 2 that has four walls with two parallel sides 52, walls 48 and 19 are not parallel. A dispensing opening 34 is located in the top side wall. The container further comprises a substrate holder 28, 30.

As to claim 4, the container comprises a single piece of material 14, see col. 2, line 38.

As to claim 9, dictionary.com defines “on” as “used to indicate contact with or extent over (a surface) regardless of position: *a picture on the wall; a rash on my back*, used to indicate proximity: *a town on the border*.” Hence an opening located “on” the intersection between the top side wall and the front wall is considered as defined by Omdoll et al in figures 2 and 3, where the opening 34 is “on” the intersection of walls 32 & 41, 42.

As to claim 10, the dispensing opening extends vertically downward toward the front side wall and the bottom side wall as shown in figure 3.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claim 28 is rejected under 35 U.S.C. 103(a) as being unpatentable over Omdoll et al (Patent no. 4,706,844). Omdoll et al discloses the claimed subject matter except that metal is used to make the container, see col. 2, line 39, instead of plastic.

It has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice, see § M.P.E.P. 2144.06. It would have been obvious to one of ordinary skill in the art to employ plastic instead of metal for the container of Omdoll et al as a matter of routine skill for the reason that plastic is more economical.

Response to Arguments

8. Applicant's arguments with respect to claims 1, 4, 9, 10 and 28 entered February 14, 2002 have been considered but are moot in view of the new ground(s) of rejection. Applicants specifically pointing out where support in the specification can be found for the newly amended claims is greatly appreciated. However, it is clear the amended claims that overly "broad" encompass embodiments not supported by the present disclosure constitute new matter as explained above. The embodiment of a "trapezoidal" shaped container as originally disclosed was fairly restrictive in that a top wall, that will be longer than the bottom wall, resulting in a trapezoid shape container where the preferred embodiment the angle between the front side wall, 3 and the bottom side wall, 2 is between 95° and 160°, more preferably 95° and 130°, most preferably 95° and 115° was what the specification disclosed. Accordingly, the rejections of paragraphs 2 and 3 above are considered well founded.

Not only that, but applicants broadening of the scope of the claimed subject matter facilitated a new grounds of rejection on art not previously contemplated.

This action is NON-FINAL.

REPLY BY APPLICANT OR PATENT OWNER TO THIS OFFICE ACTION

9. “In order to be entitled to reconsideration or further examination, the applicant or patent owner must reply to every ground of objection and rejection in this Office action. The reply must present arguments pointing out the specific distinctions believed to render the claims, including any newly presented claims, patentable over any applied references. The applicant’s or patent owner’s reply must appear throughout to be a bona fide attempt to advance the application or the reexamination proceeding to final action. A general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references does not comply with the requirements of this section. The reply must be reduced to writing (emphasis added)”, see 37 CFR 1.111 (b) & (c), M.P.E.P. 714.02.

Pointing out specific distinctions means clearly indicating in the written response what features/elements or distinctions have been added to the claim/claims, where support is found in the specification for such recitations and how these features are not shown, taught, obvious or inherent in the prior art.

If no amendments are made to claims as applicant or patent owner believes the claims are patentable without further modification, the reply must distinctly and specifically point out the supposed errors in the examiner’s action and must respond to every ground of objection and rejection in the prior Office Action in the same vain as given above, 37 CFR 1.111 (b) & (c), M.P.E.P. 714.02.


The examiner also points out, due to the change in practice as affecting final rejections, older decisions on questions of prematureness of final rejection or admission of subsequent amendments do not necessarily reflect present practice. “Under present practice, second or any subsequent actions on the merits shall be final, except where the examiner introduces a new ground of rejection that is neither necessitated by applicant’s amendment of the claims nor based on information submitted in an information disclosure statement filed during the period set forth in 37 CFR 1.97(c)” (emphasis mine), see MPEP 706.07(a).

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Conclusion

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to David T. Fidei whose telephone number is (571) 272-4553. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on (571) 272-4562.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


David T. Fidei
Primary Examiner
Art Unit 3728

dtf
May 14, 2005